



ARIZONA STATE SENATE
Fifty-Second Legislature, Second Regular Session

FACT SHEET FOR S.B. 1294

claims; licensed professionals; expert witness

Purpose

Outlines professional requirements for an expert witness who provides a preliminary expert opinion affidavit in a claim against a licensed professional. Extends the requirement for such affidavits to arbitration.

Background

Statute defines *licensed professional* as a person, corporation, partnership, limited liability company, limited liability partnership or other entity that is licensed by this state under Titles 20 or 32 to practice a profession or occupation or that is admitted to the state bar. These licensed professionals include insurance-related occupations, as well as architects, engineers, accountants and contractors, among others (A.R.S. § 12-2601). If a claim against a licensed professional is asserted in a civil action, the claimant or claimant's attorney must certify in a written statement filed and served with the claim whether or not expert opinion testimony is necessary to prove the licensed professional's standard of care or liability for the claim. If such expert opinion testimony is necessary, the claimant must serve a preliminary expert opinion affidavit (certificate of merit), with the initial disclosures pursuant to court rule.

The certificate of merit must contain: 1) the expert's qualifications to express an opinion on the standard of care or liability for the claim; 2) the factual basis for each claim against the licensed professional; 3) the licensed professional's acts, errors or omissions that the expert considers to be a violation of the applicable standard of care resulting in liability; and 4) the manner in which those acts, errors or omissions caused or contributed to the damages or other relief sought by the claimant. Statute also provides remedies for the licensed professional defending the claim if the claimant certifies that expert testimony is not required for its claim. If the claimant fails to file and serve the certificate of merit after the claimant has certified that it is necessary or after ordered by the court to do so, the court must dismiss the claim against the licensed professional without prejudice (A.R.S. § 12-2602). S.B. 1294 extends certificate of merit requirements to arbitration and establishes qualifications for the expert witness that provides the certificate.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Extends the certificate of merit requirement to arbitration.
2. Requires the expert witness, in order for the witness's opinion or testimony on the appropriate standard of practice or care to satisfy the certificate of merit requirements, to:
 - a) be licensed or registered in Arizona or another state; and
 - b) meet the criteria below.
3. Requires the expert witness to be registered or licensed in the same profession, occupation or designated branch, license category or proficiency of a profession or occupation (designated category) as the licensed professional against whom the expert opinion or testimony is offered.
4. Requires the expert witness, during the year immediately preceding the occurrence giving rise to the claim, to have devoted a majority of the expert's professional work or practice to either or both of the following:
 - a) the active practice of the same profession, occupation or designated category as the licensed professional against whom the expert opinion or testimony is offered; or
 - b) the instruction of students in an accredited educational institution for the same profession, occupation or designated category as the licensed professional against whom the expert opinion or testimony is offered.
5. Applies the above requirements as if the licensed professional were the party against whom the expert opinion or testimony is offered, if the licensed professional is a firm that employs the licensed professional against whom the expert opinion or testimony is offered.
6. Specifies that these requirements do not limit the power of the trial court or arbitrator to disqualify an expert witness on grounds other than these qualifications.
7. Prohibits an expert witness in a claim from testifying if the witness's fee is in any way contingent on the outcome of the claim.
8. Makes technical and conforming changes.
9. Becomes effective on the general effective date.

Prepared by Senate Research

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